No. 83-401

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

A.E. STALEY MANUFACTURING COMPANY,
Petitioner

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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REPLY IN SUPPORT OF PETITION

The Solicitor General's filing is not entitled as in "Opposition To Certiorari". The importance of the case is recognized.

This case is like, but different from *EEOC* v. *Shell Oil Company,* No. 82-825, and should receive plenary consideration so that all issues may be settled authoritatively.

In the case at bar, Judge Bauer dissented, recognizing that Congress had commanded that date, place and circumstances *be included in a Commissioner's charge.* He held the charge here failed to meet the statute. But the majority of the Panel, admitting that the date element of a charge is important, nevertheless sustained the July 2, 1965 date in the case at bar because an EEOC lawyer "testified" there was something,

somewhere to support it. Surely the Court cannot support such evasion of the statute.

There is no such question in *Shell.*

The Solicitor General's memorandum, suggesting that the Court hold this case pending its decision in *Shell,* would treat Staley's contention and the undisputed facts of this record that no discriminatory practices could have taken place within 180 days filing of charge because there were no hirings, firings or promotions, as a *defense on the merits.* On the contrary, *questioning the Commissioner's jurisdiction* does not go to the merits of Staley's conduct at all.

Finally, the Solicitor General's memorandum cites the inaccurate statement of the majority of the Seventh Circuit Panel that Staley's assertion that the date July 2, 1965 is inserted as a matter of commission practice in so called "systemic" charges as supported only by the "bare, unsupported allegations of [petitioner's] counsel" that the EEOC had such a policy. As shown by the Petition, Staley's position was established by the judicial findings of the United States District Court for the Eastern District of Michigan and the District Court of the District of Colorado. (See Pet. 5, 6)

While this case is like *Shell Oil* and presents one issue common to both cases, it presents other important questions. Briefing and argument of this case would give the Court a better opportunity to decide all major issues involved in the so called "systemic" charge system than the Court would have if it decided either case alone.

Our respectful suggestion is that final decision in *Shell* be withheld pending plenary disposition of this case and that the two cases finally be considered and decided together. The cases supplement each other and an understanding of one aids understanding of the other.

Respectfully submitted,

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